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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/653,196
Filing Date: August 31, 2000
Appellant(s): CASH ET AL.

James D. Wood, Reg. No.43,285
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 25, 2004.

(1)   Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2)   Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and

interferences which will directly affect or be directly affected by or have a bearing on the

decision in the pending appeal is contained in the brief. Therefore, it is presumed that

there are none. The Board, however, may exercise its discretion to require an explicit

statement as to the existence of any related appeals and interferences.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4)   Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection

contained in the brief is correct.

(5)   Summary of Invention

The summary of invention contained in the brief is correct.

(6)   Issues

The Appellant's statement of the issues in the brief is correct.

(7)   Grouping of Claims

Appellant's brief includes a statement that claims 1,3-18 and 20-31 do not stand

or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8)   Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of

claims under appeal:

- "Simulation Success Stories: Business Process Reengineering" Madigan et al.
  1997

- " Land and Front-End Effectiveness Model" Human Factors Engineering 1999

All citations to prior art references appearing in this Examiner's answer refer to the

paper authored by Madigan et al. and Human Factors Engineering.

(10)   Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims.

The examiner maintains rejections as stated in the prosecution dated June 4,

2004.

Objections

12. The amendment filed on April 4, 2004 is objected to under 35 U.S.C. 132 because

it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment

shall introduce new matter into the disclosure of the invention. The added material,

which is not supported by the original disclosure, is as follows (the enclosed

alpha/numeric number represents sections of information from applicants' amendments

to the original specification):

- (pg.3, line 2) "Run Simulation" **is now** "Rub Simulation".

- (pg. 4, lines 2-4) "There are only three parameters in this category for each

    model" **now reads** "The remaining category is the Model Parameters category.

    There are only three parameters in this category for each model.

- (pg. 6, lines 1-2) "The Run Simulation button will start running the model and

    scenario selected in the Models and Scenarios tables of this form ". **The**

    sentence now states, "The Run Simulation button 1580 will start running the

    model and scenario selected in the Models 1510 and Scenarios 1530 tables of

    this form"

- (pg. 6, line 8) No mention of figures 27-32 in the amended specification. Also,

    the notation of feature of "model FEM1" was added.

- (pg. 7, line 3) The addition of the "five rectangles at the top of Figure 30..." was

    not mentioned in the original specification.

Rejections

Claim Rejections - 35 USC § 103

13.   The factual inquiries set forth in _Graham_ v. _John Deere Co.,_ 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.

2.   Ascertaining the differences between the prior art and the claims at issue.

3.   Resolving the level of ordinary skill in the pertinent art.

4.   Considering objective evidence present in the application indicating

obviousness or nonobviousness.

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

15.   Claims 1,3-18,20-32 are rejected under 35 U.S.C. 103 (a) as unpatentable by

Madigan-E et al. ("Simulation Success Stories: Business Process Reengineering"

(1997)), in view of Human Factors Engineering ("Land and Front-End Effectiveness

Model" (1999)).

        Madigan-E et al. teaches business methods of how simulation aids in improving

process (abstract); in particular the realm of retail; but doesn't teach how to pursue via a

window-based software application that is scenario specific.

        Human Factors Engineering teaches a retail-based scenario-driven software

simulation model encompassing the daily activities of retail consumers with a flexible

data drive model that evaluates the performance of the front-end operations at a retail

store (figure 20, lines 1-2).

        At the time the invention was made, it would have been obvious to one of

ordinary skill in the art to use Human Factors Engineering (HFE) to modify Madigan-E et

al. since it would advantageous to implement a simulation in order to eradicate

correctable retail anomalies (Madigan teaches a anomaly of customer wait time and

how a scenario should be modeled to address retail anomalies such as labor issues: pg.

1277 section 3.3 paragraph).

Claim 1. A method of quantitatively evaluating alternatives to check-out operations

(Madigan: pg. 1276, section 3.1, 1st paragraph) using simulation model (Madigan: pg.

1276, section 3.1, 1st paragraph), comprising: selecting from a data input dictionary

parameters describing a first check-out operations; inputting parameter values for the

selected parameters describing the first checkout operations into the simulation model;

model transforming the first check-out operation parameters into check-out performance

results; and outputting the results from the simulation model (HFE: figure 4; and

Madigan: pg. 1277, left column, 1st paragraph, lines 3-4).

Claim 3. The method of claim 1 (HFE: figure 4; and Madigan: pg. 1277, left column, 1st

paragraph, lines 3-4), wherein the first checkout operations includes one of a

transaction process at two front facing check stands, a transaction process at two

back-to-back check stands and a transaction process at two front facing check stands

for fast-track customers (HFE: figure 8, (865) and (850)), parameter and description

columns, respectively).

Claim 4. The method of claim 1, (HFE: figure 4; and Madigan: pg. 1277, left column, 1st paragraph, lines 3-4) wherein the first check-out operations include check stand designs, transaction procedures and lane configurations.

Claim 5. The method of claim 1, (HFE: figure 4; and Madigan: pg. 1277, left column, 1st paragraph, lines 3-4) wherein the transforming steps is performed in either an unlimited arrival mode or a limited arrival mode (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14).

Claim 6. The method of claim 1, (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14) wherein the simulation model simulates two lane models using check-out operations parameters describing the following events: pre-itemization, itemization, finalization, bagging and intervention (Madigan: pg. 1277, left column, section 3.1 Model Validation).

Claim 7. The method of claim 1, (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14) wherein the first checkout operations represents front-end operations of a check-out process (HFE: figure 14, parameter column, row 3).

Claim 8. The method of claim 7, (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14)wherein the front-end operations has labor including cashiers,

baggers, super-helpers (Madigan: figure 12 and HFE: pg. 1276, section 3.1, lines 1-13)

and overflow resources.

Claim 9. The method of claim 1, (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14) wherein the first check-out operations parameters a

configuration category, a customer demand category, a schedule category, a

transaction category, a transaction itemization category, a transaction finalization

category, a transaction bagging category, a transaction intervention category, and a

model parameters category (Madigan: figure 8, Parameter Categories Section (820)).

Claim 10. The method of claim 9 (HFE: figure 10. Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14; and figure 8, Parameter Categories Section (820)), wherein the

configuration category includes parameters defining the length of and resources in a

scenario (Madigan: figure 9, description column, and first row).

Claim 11. The method of claim 10 (HFE: figure 10. Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14; and figure 8, Parameter Categories Section (820)), wherein the

resources include a number and type of check-stands and belt size (HFE: figure 6,

Scenario Description (630)).

Claim 12. The method of claim 9(HFE: figure 10. Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14; and figure 8, Parameter Categories Section (820)), wherein the

customer demand category (HFE: figure 8, Customer Demand (832)) has parameters

that control the workload on a front-end or lane

Claim 13. The method of claim 12 (HFE: figure 10. Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14; and figure 8, Parameter Categories Section (820)), wherein the

parameters that control the workload include a number of customer arrivals and

customer basket (figure 10 and 11, titles).

Claim 14. The method of claim 9 (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14. Madigan: figure 8, Parameter Categories Section (820)),

wherein the schedules category includes schedules for cashier, bagger and

super-helper in 30-minute intervals during a scenario (HFE: figure 12, titles).

Claim 15. The method of claim 9 (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st

paragraph, lines 13-14. Madigan: figure 8, Parameter Categories Section (820)),

wherein the transaction itemization parameters (HFE: figure 8, Parameter Categories

(822)) are scalar values.

Claim 16. The method of claim 15(HFE: figure 10 and Madigan: pg. 1277, section 3.3,

1st paragraph, lines 13-14. Madigan: figure 8, Parameter Categories Section (820)),

wherein the scalar parameters are a mean and a standard event time distribution of an

event time distribution (Madigan: pg. 1277, section 3.2).

Claim 17. The method of claim 9 (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14. Madigan: figure 8, Parameter Categories Section (820)), wherein the transaction-bagging category (HFE: figure 8, Parameter Categories (826)) includes parameters, which govern how long it takes to bag items, and which resources are available for bagging.

Claim 18. The method of claim 9 (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14. Madigan: figure 8, Parameter Categories Section (820)), wherein the model parameters include a number of replications, a stream number identifier and check input option identifier (HFE: figure 8, Scenario name).

Claim 20. The method of claim 1(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), wherein the data input dictionary comprises at least one allowable range of parameter values, and wherein the inputting step comprises inputting a parameter value within the allowed range (HFE: figure 8, range column).

Claim 21. The method of claim 1 (HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), comprising one of outputting a report and displaying an animation of the results of the simulation (HFE: figure 18, Title: "Number of Open Lanes").

Claim 22. The method of claim 1(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), further comprising: repeating selecting from a data input diction parameters describing a second check-out operations; inputting parameter values for the selected parameters describing the second check-out operations into the simulation model; transforming the second check out operations parameters into alternative check-out performance results; and outputting the alternative results from the simulation model (HFE: figure 25, Performance Stats—Store Checkout).

Claim 23. The method of claim 1(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), wherein the first check-out operations comprise a plurality of resource types, and wherein the results of said outputting step includes performance measures for each type of resource (HFE: figure 25, Performance Stats—Store Checkout).

Claim 24. The method of claim 23(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), wherein the first check-out operations comprise a front-end model and wherein the output results include one of: all measures; baggers; cashiers; regular lanes; fast-track lanes; self-service lanes, self service convertible to cashier operated lanes, overall front-end; super-helpers; and express lanes (HFE: figure 25, Performance Stats—Store Checkout).

Claim 25. The method of claim 23(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), wherein the first check-out operations comprise a two lane model and wherein the output results include one of: all measures; customer; cashier; lane; and bagger (HFE: figure 25, Performance Stats—Store Checkout).

Claim 26. The method of claim 23(HFE: figure 10 and Madigan: pg. 1277, section 3.3, 1st paragraph, lines 13-14), wherein the performance measures include an average, standard error, a minimum and a maximum value for each performance measurement measure (HFE: figure 25, Performance Stats—Store Checkout).

Claim 27. A method of predicting, with a simulation model programmed to accept parameters within a predetermined range, performance characteristics of a prospective check-out system for use in planning and designing a check-out system comprising (Madigan: pg. 1276-1277, sections 3.1 and 3.2): selecting a check-out configuration; determining parameters within the predetermined range that describe the check out configuration; inputting the parameters describing the checkout configuration into the simulation model; demand; model; determining parameters within the predetermined range that describe customer inputting the parameters describing the customer demand into the simulation transforming the customer demand parameters and the check-out configuration parameters into checkout configuration performance; and outputting information regarding the checkout configuration performance from the simulation model (HFE: figure 20, Model Description).

Claim 28. The method of claim 27(Madigan: pg. 1276-1277, sections 3.1 and 3.2. HFE:
figure 20, Model Description), wherein the check-out configuration comprises a plurality
of check stands, and wherein the step of determining parameters describing the
checkout configuration comprises the step of: determining for each of the plurality of
check stands, at least one parameter that describes the check stand, and wherein the
step of inputting the parameters describing the checkout configuration into the
simulation model comprises the step of (HFE: figure 7, Input Module) inputting the at
least one parameter that describes the check stand for each of the plurality of check
stands, and wherein the step of transforming comprises the step of: transforming the
customer demand parameters and the check-out configuration parameters into check
stand performance for each of the plurality of check stands, and wherein the step of
outputting information comprises the step of: outputting information regarding the
checkout configuration performance for each of the plurality of check stands, such that a
comparison of the relative performance of each of the plurality of check stands is
facilitated (HFE: figure 24, Output Module).

Claim 29. The method of claim 28(Madigan: pg. 1276-1277, sections 3.1 and 3.2. HFE:
figure 20, Model Description, figures 7, 24), wherein each of the plurality of check
stands comprises a check stand of a different type, and wherein the step of outputting
information comprises the step of: outputting information regarding the checkout
configuration performance for each type of the plurality of check stands, such that a

comparison of the relative performance of each type of the plurality of check stands is

facilitated (HFE: figure 24, Output Module, (block 2430, 2432,2434,2436,2438)).

Claim 30. The method of claim 27(Madigan: pg. 1276-1277, sections 3.1 and 3.2. HFE:

figure 20, Model Description, figures 7, 24), wherein the check-out configuration

comprises a plurality of labor types (HFE: figure 12, Schedules), and wherein the step of

determining parameters describing the checkout configuration comprises the step of:

determining for each of the plurality of labor types, at least one parameter that describes

the labor type, and wherein the step of inputting the parameters describing the checkout

configuration into the simulation model comprises the step of: inputting the at least one

parameter that describes the labor type for each of the plurality of labor types, and

wherein the step of transforming comprises the step of: transforming the customer

demand parameters and the check-out configuration parameters into labor type

performance for each of the plurality of labor types, and wherein the step of outputting

information comprises the step of: outputting information regarding the checkout

configuration performance(HFE: figure 25, Performance Stats—Store Checkout).

for each of the plurality of labor types, such that a comparison of the relative

performance of each of the plurality of labor types is facilitated.

Claim 31. The method of claim 30(Madigan: pg. 1276-1277, sections 3.1 and 3.2. HFE:

figure 20, Model Description, figures 7, 24), wherein the plurality of labor types comprise

cashiers, baggers and super-helpers, and wherein the step of outputting information

comprises the step of: outputting information regarding the checkout configuration

performance for cashiers, baggers and super-helpers, such that a comparison of the

relative performance of the cashiers, baggers and super-helpers is facilitated (HFE:

figure 25, Performance Statistics for Front End Model 1).

Claim 32. A system for predicting performance characteristics of a prospective

check-out system for use in planning and designing a check-out system comprising; a

computer (Madigan: pg. 1276-1277, sections 3.1 and 3.2. HFE: figure 20, Model

Description, figures 4, 7, 24), having a microprocessor; an input device operatively

connected to the microprocessor; and a display device properly connected to the

microprocessor, wherein the microprocessor is programmed to; receive parameters

from the input describing the checkout configuration; receive parameters from the input

describing customer demand.

(11)   Response to Argument

First Claim Grouping

Issue: "The Examiner has Improperly Relied Upon the Appellant's Specification

1)   Appellant argues using appellant's drawings (Human Factors Engineering (HFE))

(MPEP 2129), as part of a 35 U.S.C 103(a) rejection. Examiner disagrees with

appellant's argument of reciting drawings of Human Factors Engineering (HFE) since

the drawings appear to be analogous to a Power Point presentation —thus appearing

as a stand alone document--with no one disclosure of credit to either assignee or

appellant.

Based on the latter statement, the examiner argues under MPEP 2129 , which

states drawings can anticipate claims, regardless of origin. More significantly, the

drawing's date of publication (2/24/99) precedes the application filing date (8/31/00) by

more than one year, rendering the drawings susceptible to a 35 U.S.C. 102(b) rejection.

In addition, the appellant's claim for priority (60/151,269) is improper due to information

inconsistencies between the priority document and the application (09/653,196).

Therefore, it is proper for the examiner to use HFE as prior art.

2)   Appellant argues that the drawings are not considered prior art and that Madigan

doesn't teach all limitations present in claim 1. Since the appellant has administered the

drawings into the prosecution, the examiner finds the statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: Madigan has been Mischaracterized

3)   Examiner disagrees with appellant's argument of Madigan's non-teaching of " the

use of the model for analyzing alternative scenarios", since the rejection is prefaced in

Madigan's abstract; which is to "...constantly seeking newer, simpler methods which
will help them (business) remain competitive... simulation provides a structured
environment in which they (business) can better understand, analyze and improve their
process" (Madigan: pg.1275).

Issue: The Proposed Modification does not Arrive at the Claimed Invention

4)   Appellant argues that a scenario is non-equivalent to a data dictionary. Examiner
argues the various data inputs in figure 1 on page 1276 (Madigan) is inherent; inherent
by the logic of the variation of data stored in the computer bank or database, with
plurality of choices. This constitutes a scenario within itself since the purpose of a
database is to structure or organize information for extraction and manipulation for a
series of events or post-solution activity. Examples are reflected in the following
(Madigan page 1276, left column bullets 2-5): frequency of scheduled maintenance; the
division of repairs into major; medium and minor categories; and the time required to
perform the scheduled maintenance.

The appellant states that Madigan fails to disclose the manner in which the input
for the scenarios is selected by the user. Once again the examiner points to the abstract
as the reasons or motivation, which is to "...constantly seeking newer, simpler methods
which will help them (business) remain competitive ...simulation provides a structured
environment (HFE: figure 5) in which they (business) can better understand, analyze
and improve their process" pg.1275 (Madigan).

Summarily, coupling HFE's figure 14 with sources of Madigan as previously

stated, the examiner deduces prima facie for one to develop a detailed software model

(HFE figure 5) with Madigan in order to to "...constantly seeking newer, simpler

methods which will help them (business) remain competitive...simulation provides a

structured environment (HFE: figure 5) in which they (business) can better understand,

analyze and improve their process" (Madigan, pg.1275).

Second Grouping

Issue: The Proposed Modification does not arrive at the Claimed Invention

5)   Examiner disagrees with appellant's statement of claims 3,7,9-15 and 17-26

based on the prior art of Madigan and HFE do not correct deficiencies.

The appellant argues that a scenario is disclosed within the claims as non-equivalent to

a data dictionary. Examiner argues the various data inputs in figure 1 on page 1276 of

Madigan is inherent; inherent by the logic of the variation of data stored in the computer

bank with plurality of choices. This constitutes a scenario within itself since the purpose

of a database is to structure or organize information for extraction and manipulation for

a series of events or post-solution activity. For example, Madigan states on page 1276,

left column bullets 2-5 of the frequency of scheduled maintenance; the division of

repairs into major; medium and minor categories; and the time required to perform the

scheduled maintenance and repairs by type vehicle and type of repair.

The appellant states that Madigan fails to disclose the manner in which the input

for the scenarios is selected by the user. Once again the examiner points to the abstract

as the reasons or motivation to combine: to "...constantly seeking newer, simpler

methods which will help them (business) remain competitive...simulation provides a

structured environment in which they (business) can better understand, analyze and

improve their process" pg.1275 (Madigan).

Summarily, coupling HFE's figure 14 with sources of Madigan as previously

stated, the examiner deduces prima facie for one to develop a simulation model (HFE

figure 14) with Madigan in order to "...constantly seeking newer, simpler methods which

will help them (business) remain competitive...simulation provides a structured

environment in which they (business) can better understand, analyze and improve their

process" (Madigan, pg.1275).

Third Grouping

Issue: The Arguments Regarding Claim 1 Apply to Claim 4

6) The appellant argues that the drawings are not considered prior art and that Madigan

doesn't teach all limitations cited in claim 1. Since the applicant has administered the

drawings into the prosecution, the examiner finds the statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: The Examiner has failed to Allege Prima Facie Obviousness

7) Appellant states that Madigan does not teach the "check stand designs, transaction

procedures and lane configurations". Examiner disagrees with this statement by

establishing a prima facie argument by which Madigan teaches (pg. 1276, section 3.1)

the 299 discrete tasks according to their five major task categories for " a variety of

front-end checkout scenarios involving cashier checkout, customer checkout or

combination cashier/customer checkout" (Madigan: pgs 1276-1277, section 3.1).

Together with HFE's figures 14 and 16 (i.e., Number of express lanes; number of

regular lanes, etc.), it would have been obvious at the time of invention to one of

ordinary skill in the art, to combine the two sources to " seek methods which will help

them (businesses) to remain competitive (Madigan: abstract).

Fourth Grouping

Issue: The Proposed Modification does not arrive at the claimed invention

8) Appellant argues that the drawings are not considered prior art and Madigan doesn't

teach all limitations cited in claim one. Since the applicant has administered the

drawings into the prosecution, the examiner finds the statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: The Examiner has failed to Prove Inherency

9) The examiner disagrees appellant's statement of the examiner not proving inherency

of "unlimited arrival mode or a limited arrival mode". Madigan states " the model was

configured to simulate 24 hours of store operations per day for a two-day period" (pg.

1277, section 3.3); ...Because customers were force to pass through a single

finalization lane, total transaction times were nearly twice as large as those experienced

at the regular/express lanes". The latter statements concluded that customer traffic is

infrequent and inconsistent, otherwise simulations would be unnecessary. Since the

bottom line is to maintain a strong labor force (Madigan: pg. 1277, section 3.3, last

sentence) by grasping the unpredictable flow of retail consumer traffic during a normal

workday. With figure 10 by HFE, in would have been obvious to combine Madigan with

HFE figure 10, as previously stated, to predict the inconstant or unlimited arrival mode

of consumer traffic, via simulation, as one possible scenario to maintaining a strong

labor force.

Fifth Claim Grouping

Issue: The Proposed Modification does not arrive at the claimed invention.

10) Appellant argues that the drawings are not considered prior and Madigan doesn't

teach all limitations cited in claim one. Since the applicant has administered the

drawings into the prosecution, the examiner finds the statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: The Examiner has Mischaracterized Madigan

11) The examiner interprets "super helpers' as nothing more than excess or additional

labor to aid with retail transaction. Appellant defines super-helpers as " scheduled in a

pool and are available for customer interventions or bagging on a first-come-first-serve

basis depending upon the bagging rules specified by the user. The user can schedule

the quantity of cashiers, pay station cashiers, baggers..." (specification: pg. 39, lines 4-

7). Madigan states the simulation network represents five major tasks (pg. 1276,

section 3.1): finalization (tendering cash, check, credit, debit payment; bagging

(preparing, filling, and moving bags). The examiner establishes equivalence between

appellant's definition of super helpers and what Madigan teaches in section 3.1.

Furthermore, the examiner declares the term "super helpers" is nothing more than a

pretentious term directed towards retail operations.

Sixth Claim Grouping

Issue: The Proposed Modification does not arrive at the claimed Invention

12)   Appellant argues that the drawings are not considered prior art and Madigan

doesn't teach all limitations cited in claim one. Since the applicant has administered the

drawings into the prosecution, the examiner finds that statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: The Examiner has Mischaracterized Madigan

13) The examiner interprets "super helpers' as nothing more than excess or additional

labor to aid with retail transaction. Appellant defines super-helpers as " scheduled in a

pool and are available for customer interventions or bag on a first-come-first-serve basis

depending upon the bagging rules specified by the user. The user can schedule the

quantity of cashiers, pay station cashiers, baggers..." (specification: pg. 39, lines 4-7).

Madigan states the simulation network represents five major tasks (pg. 1276, section

3.1): finalization (tendering cash, check, credit, debit payment; bagging (preparing,

filling, and moving bags). The examiner establishes equivalence between appellant's

definition of super helpers and what Madigan teaches in section 3.1. Therefore it would

have been obvious to merge the two references since the preface of running the model

was to acquire and maintain a strong labor force. Subsequently, the examiner declares

the term "super helpers" is nothing more than a pretentious term directed towards retail

operations.

Seventh Claim Grouping

Issue: The Proposed Modification does not arrive at the claimed invention

14) Appellant argues that the drawings are not considered prior and Madigan doesn't

teach all limitations cited in claim one. Since the applicant has administered the

drawings into the prosecution, the examiner finds that statement non-persuasive based

on the following figures which match some to the details of claim 1: (i.e., figure 8:

output statistics (output results); figure 5: Input Module: figure 23 (inputting parameter):

Output Module (output results); figure 25 (Performance Statistics for Front-end Model 1

Store Checkout (evaluating alternatives to check out operations using simulation

model).

Issue: The Examiner has Mischaracterized Madigan

15) Appellant states "Madigan does not disclose transaction itemization parameters

input to a model including scalar values with "a mean and standard deviation event time

distribution of an event time distribution". Examiner disagrees. Madigan states the

following: "Discrete task time distribution data taken from field studies and input

parameter based on store report data were **input into the model**.... The average task

time for each of these categories was within one standard deviation of the values

obtained during field studies, suggesting that the model was operating as expected" (pg.

1277, section 3.2). Based on this information, Madigan appears to teach input

parameter to this model with outputs having a standard deviation. Therefore it would

have been obvious at the time of invention to combine Madigan with HFE with regard to

claim 16, since a modeler would want to manipulate date to specific criteria.

Eighth Claim Grouping

Issue: The Examiner has improperly relied upon the appellant's Disclosure

16) Examiner disagrees with appellant's argument of reciting drawings of Human

Factors Engineering (HFE) since the drawings appear to be analogous to a power point

presentation or an extraction from a Windows-based program—thus appearing as a

stand alone document--with no credit to either assignee or appellants.

Based on the latter statement, the examiner argues under MPEP 2129 , which

states drawings can anticipate claims, regardless of origin. More significantly, the

drawing's date of publication (2/24/99) precedes the application filing date (8/31/00) by

more than one year, rendering the drawings useable in a 35 U.S.C. 102(b) rejection. In

addition, the appellant's claim of priority (60/151,269) is improper due to information

inconsistencies between the priority document and the application (09/653,196).

Therefore, it is proper for the examiner to use HFE as prior art.

Issue: The Proposed Modification does not Arrive at the Claimed Invention

17) Examiner disagrees appellant's argument stating that HFE does not necessarily

reflect the allegation that such entry is limited to a parameter within a predetermined

range. HFE figure 20, forth line clearly states" The front end consists of up to 48 check

out stands". Clearly the model states a limitation. The figure doesn't say "an infinite

amount or an amount stated by the modeler". For the above reasons, it is believed that

the rejections should be sustained.

(12) Conclusion

In accordance with the reasoning set forth, the examiner contends that the Final

Rejection of all claims be sustained. Specifically, claims 1,3-18 and 20-31 under 35
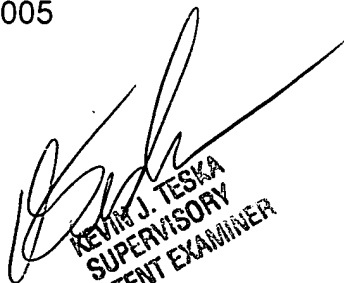
U.S.C. 103(a) and 35 U.S.C. 132.

Respectfully submitted,

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Art Unit 2123

February 1, 2005

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